



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 30, 1991

Mr. Kevin B. Laughlin
Assistant City Attorney
The City of Midland
P. O. Box 1152
Midland, Texas 79702-1152

OR91-537

Dear Mr. Laughlin:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 13165.

The Midland Police Department received an open records request for a particular police incident report involving a Class C assault. With regard to the assault, you advise this office that

no arrests have been made and no criminal charges have been filed against any of the parties involved in the incident Nor have any of the parties to date contacted the Midland City Attorney's office to file a Class C misdemeanor assault complaint. Therefore, the incident in question remains open pending an affirmative decision by our office not to prosecute any criminal action arising from the incident.

You state that you have released to the requestor portions of the report but that you seek to withhold the identity of witnesses and the summaries of their statements pursuant to section 3(a)(8) of the Open Records Act.

Section 3(a)(8), known as the "law enforcement" exception, excepts from required public disclosure

records of law enforcement agencies and prosecutors that deal with the detection, investigation, and prosecution of crime and the internal records and notations of such law enforcement agencies and prosecutors which are maintained for internal use in matters relating to law enforcement and prosecution.

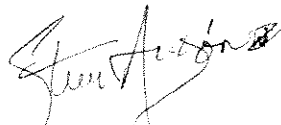
Whether this exception applies to particular records depends on whether their release would "unduly interfere" with law enforcement or prosecution. Open Records Decision Nos. 434 (1986); 287 (1981). For example, in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976), the court of civil appeals established the guidelines on what constitutes public information contained in police files. The court's holding was summarized in Open Records Decision No. 127 (1976), a review of which indicates that the identity of witnesses and their statements may be withheld pursuant to section 3(a)(8) during the pendency of the criminal investigation. *But see* Open Records Decision No. 216 (1978) (applicability of section 3(a)(8) is limited in closed investigations).

We note, however, that because one of the purposes of the exception is to protect law enforcement and crime prevention efforts by preventing suspects and criminals from using records in evading detection and capture, *see* Open Records Decision No. 127 (1976), section 3(a)(8) generally does not protect information in the hands of both the prosecution and defense. In this regard, it is not clear to this office the extent to which the "victims" and "suspects" involved in the incident are aware of each other's identities. To the extent that the identities are mutually known, this information may not now be withheld. This office does agree, however, that in this instance the summary of the witnesses' statements that you have marked in yellow may be withheld at this time pursuant to section 3(a)(8).

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with

a published open records decision. If you have questions about this ruling, please refer to OR91-537.

Yours very truly,

A handwritten signature in black ink, appearing to read "Steve Aragon", with a stylized flourish at the end.

Steve Aragon
Assistant Attorney General
Opinion Committee

SA/RWP/lcd

Ref.: ID# 13165

Enclosures: Marked documents

cc: Pam Ramirez
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